IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.205 OF 2002
IN
SUIT NO.2659 OF 1984

Almenta S.A. Plaintiff

versus

National Agricultural Co-op.
Marketing Federation of
India Ltd. and others Defendants

Mr.Kevik Setalwad i/by Mulla & Mulla for plaintiff

Mr.Shashipal Shankar for defendants.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 24th June 2005

PC :

1. This Notice of Motion is taken out by the defendants prays that hearing and final disposal of Summary Suit No.2659 of 1984 be stayed till hearing and final disposal of Suit No.488 of 1984.

2. The defendants in support of this prayer have filed an affidavit of the Regional Manager. After referring to the litigation which went upto the Supreme Court, it is pointed out that

plaintiff herein has filed a suit being Suit No.488 of 1984 for recovery of a sum of US$ 1,79,39,544=00 (equivalent to about Rs.17,93,95,44=00) as per the particulars of the claim annexed and marked Exhibit 'W' to the Plaint with interest as mentioned therein. The contract involved is sale of 4,000 M.T. of similar goods. Admittedly this suit is pending. In the written statement filed in this suit on 24th July 1984 the defendants raised several pleas including non service of statutory notice.

3. On or about 20th March 1984 the present suit is filed. In para 6 of the affidavit in support it is contended that present suit covers same contracts and claims as are subject matter of Suit No.488 of 1984 which is admittedly pending. In this suit also, a written statement is filed on 9th March 1997 where identical pleas are raised.

4. No affidavit in reply is filed to this Notice of Motion by the plaintiffs although it is pending since January 2002. With the assistance of learned counsel appearing for the parties I have perused the plaint in Suit No.2659 of 1984 and 488 of 1984. After referring to the

contracts and correspondence it is contended that two contracts are dated 12th January 1980 and 3rd April 1980. The goods and the shipment is what is referred to hereinabove. It is contended that plaintiff has suffered heavy damages by reason of breaches on the part of defendant and is therefore, entitled to recover the sums as are claimed in the prayers. In Suit No.2659 of 1984 i.e. suit where the present Notice of Motion is taken out, it is clearly stated that the contracts involved are the same. The facts set out from para 3 and correspondence are similar to that of earlier suit. Para nos.4 and 5 of the earlier suit and para 6 of the present suit are identical. A reference is made to filing of Suit No.488 of 1983 and service and non service of notice under section 90 of The Delhi Co-operative Societies Act, 1972 and it is stated that the provisions are complied with. Barring the pleas raised about notice and limitation, all other averments are identical to the earlier suit.

5. Section 10 of the Code of Civil Procedure applicability of which is not disputed, reads as under :-

"10. Stay of suit :- No Court shall proceed with

the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court."

A bare reading of Section 10 makes it clear that a Court shall not proceed with the trial of any suit in which matter in issue is directly and substantially in issue in a previously instituted suit between the same parties.

6. It is clear from a perusal of two suits that the issue involved in Suit No.488 of 1984 is directly and substantially in issue in Suit No.2659 of 1984. Admittedly Suit No.488 of 1984 is previously instituted. From a perusal of the cause title the parties arrayed are identical. In this view of the matter, I have no hesitation in concluding that the defendants can invoke Section 10 of the CPC, 1908 and seek the relief claimed in the present Notice of Motion.

7. Since there was no affidavit in reply filed by the plaintiff and the averments in the affidavit in support of the Notice of Motion have

virtually gone uncontroverted, in the interest of justice, I summoned the records in the earlier suit and after careful perusal of the plaint in both suits, I am of the view that the Notice of Motion deserves to succeed.

8. In the light of the aforesaid, Notice of Motion No.205 of 2002 is made absolute in terms of prayer clause (a). There will be no order as to costs.

(S.C.DHARMADHIKARI, J.)